

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED
OCT 14 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the Existing)
Television Broadcast Service)

MM Docket No. 87-268

**SURREPLY TO REPLY TO OPPOSITION TO
SUPPLEMENT TO PETITION FOR RECONSIDERATION**

America 51, L.P. ("America 51"), permittee of KAJW(TV), NTSC channel 51, Tolleson, Arizona, by its attorneys hereby submits this surreply to the reply to opposition to supplement to petition for reconsideration ("Reply") filed in this proceeding on October 3, 1997 by Univision Communications, Inc. ("Univision"). This surreply is necessary to respond to a revised proposal offered by Univision in its Reply.¹ As America 51 indicated in its October 6, 1997 reply to Brooks Broadcasting, LLC ("Brooks"), the Commission should reject any changes to KAJW's DTV allotment in this proceeding.² Specifically,

¹ In its Reply, Univision submits a "revised request for change to the Table of Allotments." Univision Reply at 4. Because Univision submits novel proposals in its Reply, America 51 respectfully submits that it is entitled to file the instant surreply to Univision's modified request.

² America 51 Reply at 1. Univision filed a petition for reconsideration in (continued...)

the Commission should not modify America 51's DTV channel assignment from channel 52 to any other channel in order to accommodate Univision's low power television ("LPTV") station, K52AO, operating on low power channel 52 in Tucson, Arizona. Any change to KAJW's DTV allotment to protect K52AO would be contrary to the Commission's rules and policies, would result in significant expense to America 51, and would likely delay initiation of DTV service to the public.

Univision is the licensee of LPTV station K52AO operating on low power channel 52 in Tucson, Arizona. According to Univision, the current DTV allotment to KAJW of channel 52 in Tolleson will result in K52AO's displacement.³ To protect its low power service in Tucson, Univision argues that the Commission should alter KAJW's current full-power DTV allocation from channel 52 to channel 38, 53, 55, or 56.⁴ Univision's proposal is unsound from a regulatory standpoint, and is contrary to the public interest.

²(...continued)

this proceeding on June 13, 1997, and a supplement to its petition for reconsideration on August 22, 1997. Brooks filed an opposition to Univision's supplement on September 26, 1997. America 51 replied to Brooks on October 6. Univision's October 3 Reply also addresses Brooks' September 26 opposition.

³ Univision Reply at 2.

⁴ *Id.* at 3.

First, Univision's proposal to change the DTV Table of Allotments for KAJW effectively reverses the Commission's longstanding low power/full power regulatory priorities. Low power television stations operate on a secondary basis to full power stations and, under the Commission's rules, LPTV licensees are required to correct at their expense interference to primary analog TV or DTV stations.⁵ Furthermore, the Commission's rules are clear that authorizations for new DTV stations may be made without regard to existing LPTV stations.⁶ In adopting the DTV rules, the Commission accepted the fact that "it will be necessary to displace a number of LPTV and TV translator operations, especially in the major markets."⁷ Accordingly, there is no regulatory basis for changing KAJW's Tolleson DTV allotment to accommodate K52AO. On the contrary, the Commission's rules mandate that Univision correct at its expense any harmful interference to KAJW's DTV signal.

Furthermore, America 51, which is currently in the process of constructing its analog facilities, has already set in motion the process of building

⁵ See 47 C.F.R. § 74.703(b); see also 47 C.F.R. § 74.702(b). The Commission stated in the instant proceeding that LPTV stations are to maintain their secondary status. See *Advanced Television Systems*, 7 C.R. (P & F) 994, 1033, ¶ 142 (1997) ("*Sixth Report and Order*").

⁶ 47 C.F.R. § 74.702(b).

⁷ *Sixth Report and Order*, 7 C.R. (P & F) at 1033, ¶ 141 (citations omitted).

and operating on DTV channel 52 in Tolleson. Any change to KAJW's DTV allocation at this point would disrupt America 51's ability to convert to DTV on an expedited basis, a result which is plainly contrary to the public interest. Consequently, the Commission should maintain its current DTV allocation for KAJW at channel 52 in Tolleson.

In addition, as Brooks stated in its opposition, Univision conceivably could operate on another channel in Tucson, such as a channel between 63 and 66, during the DTV transition.⁸ The Commission expressly modified its rules for this purpose. An LPTV licensee who is displaced by a DTV station may apply for a replacement channel in the same area without subjecting itself to competing applications.⁹ Furthermore, the Commission has adopted technical rule changes to provide LPTV stations with more flexibility in addressing interference issues.¹⁰ In its Reply, Univision complains that KAJW's channel 52 DTV allotment "threatens to deprive Tucson of Univision's top-rated programming."¹¹ Yet, in spite of Univision's exhaustive efforts to seek another channel for KAJW, Univision provides no evidence that it could not operate on a different channel in

⁸ See Brooks Opposition at 3; America 51 Reply at 3-4.

⁹ See 47 C.F.R. § 74.702(b); see also *Sixth Report and Order*, 7 C.R. (P & F) at 1034, ¶ 144.

¹⁰ See *Sixth Report and Order*, 7 C.R. (P & F) at 1034-36, ¶¶ 145-47.

¹¹ Univision Reply at 2.

Tucson. Thus, the Commission has already provided Univision with several options that could resolve potential interference to K52AO from the DTV allocation in Tolleson. Accordingly, any change to KAJW's DTV allocation would be premature and is unnecessary.

Importantly, a change to KAJW's DTV allocation would force America 51 to alter its build out plans, possibly delaying inauguration of DTV service to the public. The Commission has made it clear that prompt roll-out of DTV is in the public interest.¹² Accordingly, changing KAJW's DTV allotment from channel 52 to another DTV channel is not a viable solution to Univision's predicament.

¹² See *Preemption of State and Local Zoning and Land Use Restrictions on Siting, Placement and Construction of Broadcast Station Transmission Facilities*, Notice of Proposed Rule Making, MM Docket No. 97-182, FCC 97-296 ¶ 13 (rel. Aug. 19, 1997) (citing *Advanced Television Systems*, Fifth Report and Order, 7 C.R. (P & F) 863, 867, ¶ 5 (1997)).

For the foregoing reasons, America 51 respectfully submits that the Commission should reject any change to KAJW's DTV allotment in this proceeding. Univision can operate on another channel in Tucson during the DTV transition. Accordingly, the Commission should reject Univision's revised request for a change to the Table of Allotments referenced in Univision's Reply, and deny Univision's petition for reconsideration and the supplement thereto.

Respectfully submitted,

AMERICA 51, L.P.

By:



John C. Quale

David H. Pawlik

Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005-2111
(202) 371-7000

Its Attorneys

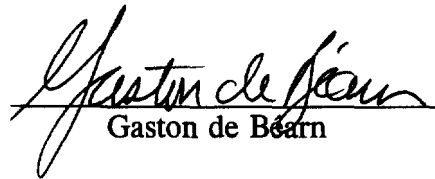
October 14, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 1997, I caused a copy of the foregoing "Surreply to Reply to Opposition to Supplement to Petition for Reconsideration" to be served by U.S. mail, postage prepaid on the following:

Paul H. Brown
Wood & Brinton, Chartered
Suite 900A
2300 M Street, N.W.
Washington, D.C. 20037

Clifford M. Harrington
Scott R. Flick
C. Brooke Temple III
Fisher Wayland Cooper Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006


Gaston de Bearn